

Department of Energy

§ 708.15

(1) The alleged retaliation taken against you and

(2) The disclosure, participation, or refusal that you believe gave rise to the retaliation;

(b) A statement that you are not currently pursuing a remedy under State or other applicable law, as described in § 708.15 of this subpart;

(c) A statement that all of the facts that you have included in your complaint are true and correct to the best of your knowledge and belief; and

(d) An affirmation, as described in § 708.13 of this subpart, that you have exhausted (completed) all applicable grievance or arbitration procedures.

§ 708.13 What must an employee do to show that all grievance-arbitration procedures have been exhausted?

(a) To show that you have exhausted all applicable grievance-arbitration procedures, you must:

(1) State that all available opportunities for resolution through an applicable grievance-arbitration procedure have been exhausted, and provide the date on which the grievance-arbitration procedure was terminated and the reasons for termination; or

(2) State that you filed a grievance under applicable grievance-arbitration procedures, but more than 150 days have passed and a final decision on it has not been issued, and provide the date that you filed your grievance; or

(3) State that your employer has established no grievance-arbitration procedures.

(b) If you do not provide the information specified in § 708.13(a), your complaint may be dismissed for lack of jurisdiction as provided in § 708.17 of this subpart.

§ 708.14 How much time does an employee have to file a complaint?

(a) You must file your complaint by the 90th day after the date you knew, or reasonably should have known, of the alleged retaliation.

(b) The period for filing a complaint does not include time spent attempting to resolve the dispute through an internal company grievance-arbitration procedure. The time period for filing stops running on the day the internal griev-

ance is filed and begins to run again on the earlier of:

(1) The day after such dispute resolution efforts end; or

(2) 150 days after the internal grievance was filed if a final decision on the grievance has not been issued.

(c) The period for filing a complaint does not include time spent resolving jurisdictional issues related to a complaint you file under State or other applicable law. The time period for filing stops running on the date the complaint under State or other applicable law is filed and begins to run again the day after a final decision on the jurisdictional issues is issued.

(d) If you do not file your complaint during the 90-day period, the Head of Field Element or EC Director (as applicable) will give you an opportunity to show any good reason you may have for not filing within that period, and that official may, in his or her discretion, accept your complaint for processing.

§ 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?

(a) You may not file a complaint under this part if, with respect to the same facts, you choose to pursue a remedy under State or other applicable law, including final and binding grievance-arbitration procedures, unless:

(1) Your complaint under State or other applicable law is dismissed for lack of jurisdiction;

(2) Your complaint was filed under 48 CFR part 3, Subpart 3.9 and the Inspector General, after conducting an initial inquiry, determines not to pursue it; or

(3) You have exhausted grievance-arbitration procedures pursuant to § 708.13, and issues related to alleged retaliation for conduct protected under § 708.5 remain.

(b) Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent you from filing a complaint under this part.

(c) You are considered to have filed a complaint under State or other applicable law if you file a complaint, or other pleading, with respect to the same facts in a proceeding established

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or mandated by State or other applicable law, whether you file such complaint before, concurrently with, or after you file a complaint under this part.

(d) If you file a complaint under State or other applicable law after filing a complaint under this part, your complaint under this regulation will be dismissed under § 708.17(c)(3).

[57 FR 7541, Mar. 3, 1992, as amended at 65 FR 6319, Feb. 9, 2000]

§ 708.16 Will a contractor or a labor organization that represents an employee be notified of an employee's complaint and be given an opportunity to respond with information?

(a) By the 15th day after receiving your complaint, the Head of Field Element or EC Director (as applicable) will provide your employer a copy of your complaint. Your employer has 10 days from receipt of your complaint to submit any comments it wishes to make regarding the allegations in the complaint.

(b) If you are part of a bargaining unit represented for purposes of collective bargaining by a labor organization, the Head of Field Element or EC Director (as applicable) will provide your representative a copy of your complaint by the 15th day after receiving it. The labor organization will be advised that it has 10 days from the receipt of your complaint to submit any comments it wishes to make regarding the allegations in the complaint.

§ 708.17 When may DOE dismiss a complaint for lack of jurisdiction or other good cause?

(a) The Head of Field Element or EC Director (as applicable) may dismiss your complaint for lack of jurisdiction or for other good cause after receiving your complaint, either on his or her own initiative or at the request of a party named in your complaint. Such decisions are generally issued by the 15th day after the receipt of your employer's comments.

(b) The Head of Field Element or EC Director (as applicable) will notify you by certified mail, return receipt requested, if your complaint is dismissed for lack of jurisdiction or other good cause, and give you specific reasons for

the dismissal, and will notify other parties of the dismissal.

(c) Dismissal for lack of jurisdiction or other good cause is appropriate if:

(1) Your complaint is untimely; or

(2) The facts, as alleged in your complaint, do not present issues for which relief can be granted under this part; or

(3) You filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under this part; or

(4) Your complaint is frivolous or without merit on its face; or

(5) The issues presented in your complaint have been rendered moot by subsequent events or substantially resolved; or

(6) Your employer has made a formal offer to provide the remedy that you request in your complaint or a remedy that DOE considers to be equivalent to what could be provided as a remedy under this part.

§ 708.18 How can an employee appeal dismissal of a complaint for lack of jurisdiction or other good cause?

(a) If your complaint is dismissed by the Head of Field Element or EC Director, the administrative process is terminated unless you appeal the dismissal to the OHA Director by the 10th day after you receive the notice of dismissal as evidenced by a receipt for delivery of certified mail.

(b) If you appeal a dismissal to the OHA Director, you must send copies of your appeal to the Head of Field Element or EC Director (as applicable) and all parties. Your appeal must include a copy of the notice of dismissal, and state the reasons why you think the dismissal was erroneous.

(c) The OHA Director will issue a decision on your appeal and notify the parties of the decision by the 30th day after it is received.

(d) The OHA Director's decision, either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint, is the final decision on your appeal, unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.